IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF NOVEMBER,
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION Nos.864, 22173 AND 22183 OF 2006

WRIT PETITION No.864 OF 2006

Between:

Xerox India Limited, rep. by its
Customer Administration Manager
Sri M.S.Ganesh babu.

..... PETITIONER

AND

Government of Andhra Pradesh
Through Principal Secretary to Government
Revenue (CT-II) Department, Hyderabad,
And others.

....RESPONDENTS

WRIT PETITION No.22173 OF 2006

Between:

Xerox India Limited, rep. by its
Customer Administration Manager
Sri M.S.Ganeshbabu.

..... PETITIONER

AND

Government of Andhra Pradesh
through Principal Secretary to Government
Revenue (CT-II) Department, Hyderabad,

And others.

....RESPONDENTS

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WRIT PETITION No.22183 OF 2006

Between:

Xerox India Limited, rep. by its
Customer Administration Manager
Sri M.S.Ganeshbabu.

..... PETITIONER

AND

Government of Andhra Pradesh
through Principal Secretary to Government
Revenue (CT-II) Department, Hyderabad,
And others.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION Nos.864, 22173 AND 22183 OF 2006

C O M M O N O R D E R
(Per Sri Justice J.Chelameswar)

The petitioner is a limited company carrying on business of manufacture and sale of Xerox machines etc. The manufacturing Unit is situated in Utter Pradesh. The petitioner in W.P.Nos.22173 and 22183 of 2006 is a registered dealer both under APGST and CST Acts, whereas the petitioner in W.P.No.864 of 2006 is a registered dealer in APGST Act on the rolls of the 5th respondent.

The liability of the petitioners for tax both under APGST and CST Acts with reference to the assessment year 1994-1995 and 1996-1997 came to be determined by the 1st respondent. Aggrieved by the assessment, the petitioner carried the matters in appeal before the

Sales Tax Appellate Tribunal. It appears that the substantial issue before the Tribunal is regarding the classification of goods and whether the petitioner is entitled for concessional rate of tax both under the APGST and CST Acts. The appeals are said to be still pending. During pendency of the appeals, liability of the petitioner for the assessment years 1997-98, 1999-2000 and 2000-2001 respectively came to be determined by the 5th respondent, assessing the goods at a concessional rate of tariff as claimed by the petitioner. The 4th respondent, however, chose to revise those orders in exercise of the power under Section 20(2) of the APGST Act and came to the conclusion that the petitioner is liable to pay higher amount of tax than the one determined by the 5th respondent. Aggrieved by the same, the petitioner carried three appeals before the Sales Tax Appellate Tribunal, which are not yet numbered. Pending the appeals, the petitioner approached 3rd respondent seeking stay of the recovery of the tax in dispute. The said applications of the petitioner were dismissed by orders of the 3rd respondent dated 29.12.2005 and 29.09.2006. Hence, these three writ petitions.

Learned counsel for the petitioner Sri M.S.Ramachandra Rao submitted that the exercise of the revisionary power by the 4th respondent insofar as assessments for the three years, from out of which these three writ petitions arise, is wholly contrary to law declared by this Court in a decision reported in INDO NATIONAL LIMITED V/s. COMMISSIONER OF COMMERCIAL TAXES, A.P. HYDERABAD[1], wherein a Full Bench of this Court held that while an issue is pending adjudication before the Appellate Tribunal, the exercise of revisionary jurisdiction under Section 20(2) of APGST Act by the Department is illegal.

Heard the learned Government Pleader.

The declaration of the law made by a Full Bench of this Court is categoric and notwithstanding such a declaration of law, the 4th respondent still chose to exercise the power under Section 20(2) of the Act, which in our view is plainly illegal.

In the circumstances, we are of the opinion that the writ petitions can be disposed of at the admission stage itself by directing the respondents not to take any coercive steps for recovery of the disputed tax insofar as three assessment years, referred to above, are concerned, pursuant to the revisionary orders passed by the 4th respondent pending final decision in the appeals by the Sales Tax Appellate Tribunal.

With the above direction, the writ petitions are accordingly disposed of.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

1ST NOVEMBER, 2006
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION Nos.864, 22173 AND 22183 OF 2006
(Per Sri Justice J.Chelameswar)

1ST NOVEMBER, 2006

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[1] 2004 (136) STC 586